

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re )  
)  
Comcast Corporation ) MB Docket No. 10-56  
)

Accepted/Files

APR 27 2016

To: Marlene H. Dortch, Secretary  
For transmission to: The Commission

DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Office of the Secretary

**RESPONSE TO "OBJECTION"**

1. Entertainment Studios, Inc. and the National Association of African American-Owned Media ("Petitioners") hereby respond to the "Objection" submitted by Comcast Corporation relative to the Petitioners' Consolidated Reply to Comcast, Aspire and Revolt. Comcast asserts that the Reply was late-filed and should not be considered. Comcast's calculation of the deadline for filing the Reply, however, is not entirely accurate, and its assertions are unfounded.

2. The Petition initiating this round of submissions was a formal pleading seeking specific, if extraordinary, relief in the unusual circumstances surrounding Comcast's conduct following the 2011 disposition of the applications in Docket No. 10-56. It was not an *ex parte* "comment" on the applications that were the original subject of that docketed proceeding because those applications were acted on five years ago, and that action has long since become final. Rather, the Petition requested initiation of new Commission action in light of Comcast's misconduct following that action.

3. A copy of the Petition was formally served on Comcast by mail. The rules provide that oppositions to petitions may be filed within 10 days of the filing of the petition, plus an additional three days if the petition is served by mail. *See* Sections 1.45(b), 1.4(h). Understanding its Petition to be subject to these provisions, the Petitioners calculated that oppositions could be

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filed up to and including April 6, *i.e.*, 13 days following the March filing of the Petition. Comcast filed its Opposition on April 4, 2016, declining, intentionally or otherwise, to avail itself of the full available time as calculated by the Petitioners. But at least one party – Aspire – did file a letter constituting, in effect, an opposition to the Petition on April 5, 2016, one day *after* the deadline as calculated by Comcast.<sup>1</sup> This confirms Petitioners’ calculation of the deadline for oppositions.

4. A total of three submissions were filed in opposition to the Petition: Comcast’s Opposition and letters disputing aspects of the Petition filed by Aspire and Revolt. Petitioners were obligated to respond with a single consolidated reply. *See* Section 1.45(c). And that consolidated reply was to be filed “within 5 days *after the time for filing oppositions ha[d] expired*”. *Id.* (emphasis added). In other words, the deadline for replies is determined by the date by which any oppositions *could* have been filed, not by when Comcast happened to file its own opposition. Thus, the earliest that Petitioners’ reply would have been due would have been April 13, 2016, since intervening weekends and holidays are not counted when a response period is less than seven days. *See* Section 1.4(g).

5. The rules also provide for an additional three days if the pleading to which the reply is directed is served by mail. Those additional three days (plus two days because of an intervening weekend) took the deadline for the reply to Monday, April 18, 2016. Neither Aspire nor Revolt bothered to serve copies of their responses on the Petitioners by any means.<sup>2</sup> In light of that failure

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<sup>1</sup> While the Aspire letter is dated April 4, 2016, according to ECFS it was received and posted on April 5. *See* Attachment A hereto.

<sup>2</sup> Comcast, by contrast, did provide Petitioners a copy of its Opposition by email on the day it was filed (at 8:18 p.m.). Aspire and Revolt may have thought that service of their responses on Petitioners was unnecessary because *ex parte* communications are normally permitted in “permit-but-disclose” proceedings and Docket No. 10-56 was declared to be such a proceeding. *See* Public Notice, DA-10-457, released March 18, 2010. But Section 1.1206(a) provides that *ex parte* communications are permissible in permit-but-disclose proceedings only “until the proceeding is no

to serve responses by hand or electronically, Petitioners understood that they would be entitled, at a minimum, to the additional three days that would have been permitted had Aspire and Revolt at least mailed copies of their letters to Petitioners. Since Petitioners' Reply was filed on April 15, 2016, it was early, not late.

6. While Comcast claims that the Commission should disregard Petitioners' Reply, Comcast is itself unable to do so. Instead, Comcast includes in its Objection a surreply of sorts addressing the merits of Petitioners' Reply. That, of course, is ordinarily inappropriate (absent specific leave to do so, which Comcast did not bother to request) and, therefore, objectionable. But Comcast's carefully limited assertions are nothing more than conclusory claims that fail to acknowledge, much less address, the specifics of Petitioners' showing. That failure suggests that Comcast has no effective response to Petitioners' showing.

Respectfully submitted,

*Harry F. Cole sr*

/s/ Harry F. Cole  
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Entertainment Studios, Inc.*

April 27, 2016

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longer subject to administrative reconsideration or review or to judicial review". The actions taken in Docket No. 10-56 attained that status several years ago.



## Attachment A

Image taken from Docket No. 10-56  
Listing on ECFS, April 22, 2016

<u>Proceeding Number</u>	<u>Name of Filer</u>	<u>Law Firm Name</u>	<u>Date Received</u>	<u>Date Posted</u> ♥	<u>Exparte</u>	<u>Type of Filing</u>	<u>Pages</u>
<u>10-56</u>	<u>Comcast Corporation</u>	<u>Gibson, Dunn &amp; Crutcher LLP</u>	04/21/2016	04/21/2016	No	OTHER	3
<u>10-56</u>	<u>Comcast Corporation and NBCUniversal Media LLC</u>		04/14/2016	04/15/2016	No	LETTER	1037
<u>10-56</u>	<u>Comcast Corporation</u>		04/08/2016	04/13/2016	No	REPORT	15
<u>10-56</u>	<u>Comcast Corporation</u>		04/08/2016	04/12/2016	No	REPORT	1
<u>10-56</u>	<u>Entertainment Studios</u>		04/11/2016	04/11/2016	Yes	NOTICE OF EXPARTE	4
<u>10-56</u>	<u>Comcast Corporation</u>		04/08/2016	04/08/2016	No	LETTER	15
<u>10-56</u>	<u>Entertainment Studios</u>		04/07/2016	04/08/2016	Yes	NOTICE OF EXPARTE	1
<u>10-56</u>	<u>Aspire Channel, LLC</u>		04/05/2016	04/05/2016	No	LETTER	5
<u>10-56</u>	<u>Comcast Corporation</u>	<u>Gibson, Dunn &amp; Crutcher LLP</u>	04/04/2016	04/05/2016	No	OPPOSITION	136
<u>10-56</u>	<u>Keith Clinkscales</u>	<u>Law Offices of Barbara Shulman</u>	04/01/2016	04/01/2016	No	LETTER	1

## CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that, on this 27th day of April, 2016, I have caused copies of the foregoing "Response to 'Objection'" to be sent by electronic mail or placed in the U.S. mail, first class postage prepaid (as indicated below), addressed to the following:

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